Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems	)	WT Docket No. 96-18
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

TO: The Commission

COMMENTS OF AMERITECH MOBILE SERVICES, INC. ON MARKET AREA LICENSING PROPOSAL

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SUMMARY

Ameritech Mobile Services, Inc. (Ameritech) hereby submits its comments on the market area licensing proposal contained in the Commission's February 9,1996 Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding. Ameritech believes that the MTA-based market area licensing scheme will be difficult to implement, and that the costs associated with the proposal will far outweigh the benefits. Since the industry is mature, and many applications have been filed in anticipation of auctions, the savings in terms of reduced application processing will be minimal. More importantly, paging systems have grown in response to customer demand, without regard to geographic boundaries. Attempting to force the licensing process into a system designed for awarding unlicensed spectrum will only result in disruption of existing services.

Ameritech therefore proposes an alternative approach, which will allow licensees to self-define their market areas based on existing facilities, thereby gaining the benefits of flexible licensing while avoiding the disruption of imposing a Major Trading Area (MTA) or similar market size on the industry. Licensees could fill in their composite system contour (based on existing interference protection) without filing applications. Mutually exclusive expansion applications could be resolved using site-specific oral or telephonic auctions. If market area licensing is adopted, incumbents should be allowed to file applications which would expand system coverage within 40 miles, and/or fill in "pockets" of unserved areas which are entirely or mostly surrounded by the incumbent's system. Moreover, it is imperative that 900 MHz licensees retain their current interference protection. If the new service and interference contour formulae are adopted, existing services will receive interference where their customers currently are able to receive pages. This loss of service to existing subscribers would not serve the public interest.

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Ameritech Mobile Services, Inc. (Ameritech) hereby submits its comments on the market area licensing proposal contained in the Commission's February 9,1996 Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding. As discussed below, Ameritech believes that the MTA-based market area licensing scheme will be difficult to implement, and that the costs associated with the proposal will far outweigh the benefits. Ameritech therefore proposes an alternative approach, which will allow licensees to self-define their market areas based on existing facilities, thereby gaining the benefits of flexible licensing while avoiding the disruption of imposing a Major Trading Area (MTA) or similar market size on the industry. Whatever approach is taken by the Commission, it is imperative that 900 MHz licensees retain their current interference protection.

I. The Commission Should Retain the Existing Service Area and Interference Contours for 900 MHz.

At paragraph 52 of the NPRM, the Commission proposes to adopt a new "eight radial contour method" for calculating the protected service area and interference contours for 900 MHz stations. The current rules protect an assumed service area that is generally 20 miles, based on an assumed interference contour that is generally 50 miles (for a minimum mileage separation that is typically 70 miles). However, the formulae set forth in paragraph 52 for calculating the protected service area and the interference contour would result in co-channel licensees being able to establish facilities much closer than the previous 70 mile separation.[1] Comment is requested on using this new standard to govern protection to incumbents after market area auctions are completed. NPRM at ¶53.

In its March 1, 1996 comments in this proceeding, Ameritech opposed the adoption of the new 900 MHz contour formulae for interim licensing purposes.[2] For the same reasons, adoption of these formulae as a permanent standard for protection of incumbent licensees would not serve the public interest. If the formulae are adopted,

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[1] The formula for interference contours uses a median field strength of 21 dBuV/m, while the service area formula uses a median field strength of 47 dBuV/m. The curves attached to the NPRM as Appendices B and C indicate that, for stations operating at an antenna height above average terrain (HAAT) of 100 feet (which is not unusual for paging operations), with an effective radiated power of 1000 watts, the protected service area shrinks from 20 miles to 4.9 miles; and the interference contour shrinks from 50 miles to a mere 20.9 miles. Even at a more typical HAAT of 200 feet, the service area is reduced to 7.5 miles and the interference contour is only 27.1 miles. Thus, the new formulae produce a drastically smaller separation between potentially interfering operations.

[2] The commentors that focused on this issue agreed with Ameritech on this point. See, e.g., Comments of ProNet Inc. at pp. 4-6; Comments of the Paging Coalition at pp. 18-19; Comments of Source One Wireless at pp. 4-5; Comments of American Paging, Inc. at pp. 3-4; Emergency Petition for Immediate Withdrawal of Freeze of the Coalition for a Competitive Paging Industry at pp. 25-27.

900 MHz licensees will find that interference from the auction winner will significantly reduce reliable coverage, and could even result in gaps in the middle of existing systems.

900 MHz systems have been planned pursuant to the existing co-channel separation standards, and Ameritech believes that these standards are an appropriate measure of the interference protection needed in the 900 MHz band. If the new formulae are applied to pending 900 MHz applications and future sites, the reasonable buildout of existing systems in response to the marketplace will be frustrated. But when applied to the protection of existing facilities, the result will be disastrous.

A system which previously had interference protection for continuous coverage among its sites may now find a gap in the protection large enough that the market area auction winner will be able to "squeeze" in a co-channel facility, thereby disrupting the continuous coverage previously enjoyed by the existing carrier's customers.[3] This outcome would be wholly inconsistent with the Commission's statement that "we believe it is essential that the incumbent's rights to operate under its existing authorizations not be diminished." NPRM at ¶22 (emphasis added). Indeed, the NPRM promises that "under any geographic licensing scheme adopted in this proceeding, all incumbent systems will be entitled to continue operating under existing authorizations with full protection from interference." Id. (emphasis added). The Commission should abide by this promise. Disruption of an existing service is inimical to the public interest standard which is the foundation of the Commission's licensing authority. Nothing in the Omnibus Budget Reconciliation Act of 1993 eliminated this standard when adopting

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[3] Because the market area license will see an increase in the value of its auction purchase if incumbent licensees are driven off of the channel, it has every incentive to place a transmitter wherever the new contour formulae yield gaps in an incumbent's coverage.

auction authority. Indeed, since many of Ameritech's paging customers are medical, police and fire personnel, degradation of existing services could threaten public safety, in contravention of Section 1 of the Communications Act of 1934, as amended.

The new standard, which is derived from the Okumura 900 MHz propagation curves (NPRM at ¶52), is based on a study which focused on two-way operations rather than paging. Therefore, it can be expected that the standard is unnecessarily restrictive, because it is designed to accommodate successful communications back to the base station from low power mobiles. No such consideration exists in one-way paging. Moreover, the Okumura curves are based on a mobile receive antenna height of 1.5 meters (i.e., 4.92 feet) above ground, which according to the Commission "seems appropriate for paging receivers." Id. at fn. 102. However, this antenna height would require customers to carry their pagers on their shoulders or head, a faulty assumption.

The use of the inappropriate Okumura curves serves to demonstrate that there is a dearth of reliable studies concerning the propagation of 900 MHz for one-way paging. The Commission's decision to utilize the fixed radius method of protection for this band has made such studies largely unnecessary to date. It would be inappropriate for the Commission to now switch to the eight radial contour method until reliable studies have been conducted, and the results of these studies have been subjected to industry scrutiny and field tests. Based on its own experience in providing 931 MHz paging service to the public, Ameritech believes that field testing will show that paging receivers will receive a reliable signal well beyond the service area predicted by the 47 dBuV/m formula and that harmful interference will result in many instances if the market area licensee is able to establish co-channel operations at the separations provided by the 21 dBuV/m formula. The industry has not had adequate time to perform such studies.

The proposed 47 dBuV/m service area definition is based on a reasonably strong field strength "at more than 90% of locations in a suburban environment." NPRM at ¶52. While a "more than 90%" reliability standard may be appropriate for new radio systems, it is not appropriate when deciding the level of interference protection to be afforded to existing systems which already serve millions of customers in the aggregate. Because 900 MHz systems have been able to operate with an assumed service area of 20 miles and co-channel separation of 70 miles in most cases, customers have become accustomed to being able to receive paging messages throughout much of the existing service area. While they may not receive their pages at more than 90% of locations in the service area, many no doubt find that 85% or better reliability is more than adequate. If the Commission now reduces this protection through the use of the "more than 90%" standard, many paging users will experience a loss of service, as the market area winner establishes co-channel transmitters virtually on the door step of existing systems. The adverse consequence of this loss of service, and the possibility of gaps in currently adequate coverage, far outweigh any administrative streamlining or other perceived benefits from market area licensing.

In this regard, the Commission must recognize that the interference protection required for 900 MHz systems is changing. Ameritech is in the process of implementing the "FLEX" protocol for its 931 MHz system, and has already encountered greater sensitivity to co-channel signals in this format. Ameritech has been advised by its equipment manufacturer that the high speed, all digital signals used in a FLEX system are more easily disrupted by a non-coordinated co-channel signal, such that the message either will not be received, or will be scrambled. In the case of numeric messages, the

recipient may not even realize that the numbers are appearing out of order, and may act on the basis of this faulty information.

To the extent that the new formulae would retroactively apply to stations already licensed, these new standards would fail the balancing test for retroactivity discussed in Ameritech's March 1, 1996 comments and March 11, 1996 reply comments, given the harm caused to existing carriers, and their strong reliance on the present standard. See Retail, Wholesale & Department Store Union, AFL-CIO v. NLRB, 466 F.2d at 390. It is well settled that the retroactive application of administrative rules and policies is looked upon with disfavor by the courts. "A rule that has unreasonable secondary retroactivity -- for example, altering future regulation in a manner that makes worthless substantial past investment incurred in reliance upon the prior rule -- may for that reason be 'arbitrary' or 'capricious,' . . . and thus invalid." Bowen v. Georgetown University Hospital, 488 U.S. 208, 220 (1988) (J. Scalia, concurring); Yakima Valley Cablevision v. FCC, 794 F.2d 737, 745 (D.C. Cir. 1986) ("Courts have long hesitated to permit retroactive rulemaking and noted its troubling nature.") Existing licensees have invested literally hundreds of millions of dollars on their systems, based on the protection afforded by the existing rules. The effect of the retroactive change would only be exacerbated by the fact that licensees are unable to shore up their coverage in response to the reduced protection due to the filing freeze.

Moreover, the reduction of 900 MHz service areas and interference protection would appear to suffer the same statutory infirmity as the filing freeze. The reduction of such protection will not benefit existing carriers or their customers. Instead, it will only result in a disruption of paging services. The only apparent reason for the revised service and interference contour calculations would be to create more "white space,"

thereby increasing potential auction revenues. This purpose contravenes Sections 309(j)(7)(A) and (B) of the Communications Act of 1934, as amended, which prohibits the Commission from making its spectrum allocations and designing regulations based "on the expectation of Federal revenues" from the use of auctions. "[A]n agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, ..." Arent v. Shalala, 70 F.3d 610, 616 (D.C. Cir. 1995) [quoting Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983)]. Since Congress has expressly prohibited the Commission from basing its spectrum allocations and licensing regulations on the potential for auction revenues, adoption of the new contour formula would be arbitrary and capricious.

II. The Commission Should Significantly Alter Its Market Area Licensing Proposal.

The Commission has asked for comment on all aspects of its market area licensing proposal, including the impact on incumbent licensees, the impact on potential new market entrants, the costs and benefits of the licensing scheme and whether it is practical. NPRM at ¶23. Ameritech is licensed for a wide area 931 MHz system that substantially covers its Regional Bell Operating Company territory, and is comprised of hundreds of transmitter sites. Therefore, Ameritech would appear to be one of the carriers most likely to benefit from the market area licensing proposal. However, after careful consideration of the Commission's proposal, Ameritech must conclude that the costs associated with the market area licensing scheme as proposed outweigh the benefits.

While the issuance of market area licenses would make it possible for Ameritech to avoid licensing individual transmitters in the future, this advantage must be weighed

against a number of potential negatives. Market area licensing could have saved the industry much time and effort ten years ago when 900 MHz channels were not heavily licensed. However, carriers have now gone through the trouble of licensing their systems in large part. Over the years, these systems have grown strictly according to customer demand and engineering considerations, without any regard for artificial geographic boundaries. Market area licensing would now put all carriers, large and small, in the awkward position of either bidding on market areas they do not necessarily need in order to serve their customers, or risking a degradation of service. Major Trading Areas will be too large of an area for many existing licensees to bid on. While this is especially true of smaller carriers, even larger carriers are affected.

For instance, in order to win all of the MTAs which contain some portion of its regional 931 MHz system, Ameritech would have to bid on not only the Chicago, Detroit, Cleveland and other MTAs which make up the core of its system, but also the Pittsburgh, Cincinnati, Minneapolis, Des Moines, St. Louis and Louisville MTAs. Each of these six MTAs contains a significant area in which Ameritech currently has little or no interest, based on the requirements of its customers.[4] If Ameritech wins these MTAs, it would be committing itself to an expensive buildout to areas which are not part of Ameritech's business plan, and where Ameritech does not have cellular infrastructure which it can use to minimize the cost of service to its customers. On the other hand, if Ameritech fails to win these MTAs, it will be unable to incrementally expand its existing service in response to customer demand, in those areas immediately adjacent to the present coverage. Moreover, its customers may find that their pagers do not

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[4] For example, the Minneapolis MTA includes all of North Dakota and most of South Dakota. The Cincinnati MTA extends eastward past Beckley, West Virginia, and into parts of Virginia.

receive messages over the same coverage area, due to interference from transmitters which the MTA winner will install nearby (especially if the new service area and interference contour formulae are adopted).[5] On the other hand, Basic Trading Areas (BTAs) are generally too small for 900 MHz paging systems.

Unfortunately, market area licensing in the proposed format may simply become a way for a competitor or speculator to interfere with an existing carrier's buildout, by winning the license for the relevant area. In essence, the market area licensee would be in a position to block future expansions and/or modifications by the incumbent. If at any time this incumbent loses a site, it could also lose its authority to operate that portion of the existing system, and the area will automatically revert to the auction winner. NPRM at ¶22. The danger of such occurrences will increase as site availability becomes scarce, due to the overwhelming demand for prime antenna space by PCS licensees. Licensees may find that site owners either decline to renew their lease, or raise their site rental dramatically.

As discussed below, the Commission's proposed buildout requirement for market area licensees may inadvertently facilitate this sort of sabotage by allowing the auction winner to cover only that area not already served by incumbent licensees (i.e., what the Commission refers to as the "substantial service" option). NPRM at ¶¶ 40-41. And by shrinking the area in which the incumbent licensee is entitled to protection, the Commission's new contour formulae would make MTAs more attractive targets for

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[5] Ameritech also operates local and state-wide paging systems in the lower common carrier paging bands. These systems face the same dilemma. Indeed, the situation may be worse in the lower bands, where most systems started out as local services. Therefore, there are generally more co-channel systems owned by numerous different licensees within any given MTA. This makes the prospect of purchasing the MTA at auction unattractive to any of the legitimate incumbents.

mischief, since a competitor or speculator may now be able to create gaps in an incumbent's coverage by strategically placing transmitters in between the newly reduced service areas.

Against these negatives there appear to be few positives. As the Commission acknowledges, the paging industry is mature, and thus the lion's share of licensing has been accomplished. Current licensing activity is "confined largely to the addition of fill-in sites and minor expansion by existing licensees." NPRM at ¶13. Therefore, while it is critical that existing licensees be able to timely expand their systems in response to the marketplace, the administrative savings (in the form of fewer applications) from market area licensing will be minimal. Nor will the proposed plan create significant opportunities for new market entrants. The NPRM acknowledges that "there is relatively little desirable spectrum that remains available for licensing" in the lower common carrier paging (CCP) bands. Id. 931 MHz channels "are scarce in virtually all major markets and most mid-sized markets." Id. at ¶14. And exclusive 929 MHz channels "are nearly as occupied as the 931 MHz CCP channels, and soon there may be insufficient spectrum to allow coordination of new systems (as opposed to "fill-in" sites) in most major or mid-sized markets." Id. at ¶18.

Because of the negatives associated with the market area licensing proposal in its present form, Ameritech must conclude that the costs associated with market area licensing outweigh the benefits. Instead, Ameritech proposes an alternative approach which would give carriers the advantage of avoiding unnecessary site-by-site licensing, but which would not expose their customers to degradation of service due to incursions by the market area licensee.

The alternative approach would recognize the status quo, and the fact that there is little or no spectrum left for new systems. Under this approach, incumbent licensees would define their own "market area license" by submitting a map of the area in which they are entitled to exclusive use of a frequency, because their existing sites and applications which have achieved cut-off status prevent any other carrier from making reasonable use of the channel. Thus, a 931 MHz licensee would be free to fill in gaps of up to 150 miles within their system without filing an application, because other applicants could not afford 70 mile protection to the incumbent in that gap, while serving an appropriate area.[6] This would allow an existing licensee such as Ameritech to build out its system without unnecessary paperwork, but would not create the danger of service degradation described above. Any "white space" between two co-channel systems could be licensed under existing procedures, with mutually exclusive filings being resolved by auction. Such auctions could be accomplished through oral outcry or telephonic bidding in an expedited format, to limit the time and expense involved. Licensing of non-mutually exclusive applications would be significantly expedited, because many "fill-in" applications would no longer have to be filed.[7]

This approach would accomplish the Commission's goal of simplifying system expansion and reducing the administrative burden on licensees and the Commission. NPRM at ¶21. It would also enhance regulatory symmetry, especially between 931 and 929 MHz carriers. And while it would not completely eliminate mutual exclusivity, it

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[6] The incumbent would be able to fill in pockets of coverage, even if its existing co-channel facilities did not surround the gap in all directions. See Section IV.B., infra.

[7] Ameritech would recommend that licensees be allowed to file notifications of construction of internal transmitters under this proposal, so that these sites would be entitled to interference protection if the exterior system contour changed in the future.

would provide a mechanism for resolving frequency conflicts without the complete upheaval of existing services that would be involved in retroactively imposing MTA or other geographic area licenses on top of systems which have already been established without regard to such borders.[8] The Commission has indicated that its new rules should be designed "so that competitive success is dictated by the marketplace, rather than by regulation." NPRM at ¶2. By taking into account the historic evolution of existing paging systems, rather than trying to force the process into a mold designed for licensing clean spectrum, the alternative approach allows the marketplace to decide where paging systems will expand, and at the same time eliminates the red tape associated with filling in the gaps within existing systems.

The Commission proposes to allow incumbent licensees to either (1) continue operating under existing authorizations or (2) trade in their site-specific licenses for a single system-wide license, demarcated by the aggregate of the service contours around each of the incumbent's contiguous sites operating on the same channel. NPRM at ¶37. This second option may be similar to Ameritech's proposed alternative. However, the NPRM does not explain how protection to a system-wide composite license would differ from collective protection to the incumbent's existing licenses.[9] The NPRM implies that the system-wide license would be restricted to "contiguous" sites which may force the incumbent to give up any sites that do not have overlapping contours with the main portion of the system. This aspect of the proposal would not serve the public interest,

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[8] Much of the confusion and daisy chain mutual exclusivity in the 900 MHz bands would be eliminated upon implementation of frequency specific licensing, in the manner adopted in the Part 22 Rewrite Order, 9 FCC Rcd 6513 (1994).

[9] The Commission should also clarify that a discontinuance of operation or violation by any single site under the system-wide license would not jeopardize the entire system.

since carriers have in many cases established "outlying" transmitters serving locations where their customers must travel. Because of terrain, economics or lack of antenna sites, it is not always feasible to provide continuous coverage between these outlying sites and the main system. Ameritech's proposal would continue to protect outlying sites using the co-channel separations provided in the current rules. The Commission's second option would not allow the incumbent to expand beyond its existing interference contour. However, Ameritech's proposal would allow incumbent licensees to establish transmitters anywhere that could not be served by the market area licensee, even if the incumbent did not have an "unbroken" composite interference contour. Moreover, incumbents could apply for incremental extensions of their coverage as allowed under the existing rules. Ameritech's proposal would also continue to use the existing fixed radius interference contour.

If the Commission is not willing to adopt this alternative proposal, then it should adopt an exemption from market area auctions for incumbent licensees which can demonstrate that 70 percent of the MTA population is within their interference contours. This exception would recognize that an MTA in which a single licensee has such a dominant presence will be of little value to other potential applicants, and the public interest is better served by letting this licensee expand to serve the rest of the MTA.

The Commission also requests comment on whether nationwide paging channels should be subject to market area licensing. NPRM at ¶26. Because nationwide 931 and 929 MHz systems generally offer local and regional coverage as well, they directly compete with other licensees that will become subject to market area licensing. Ameritech advocates that all such licensees be on a level playing field, so that the nationwide carriers do not gain an undue competitive advantage in the marketplace.

However, Ameritech believes that this parity can best be maintained by modifying the proposed licensing scheme pursuant to the alternative approach described above.

III. The Commission Should Adopt Auction Methodology Which Protects the Interests of Incumbent Licensees.

A. Multiple Round Auctions Should Be Used.

As discussed above, Ameritech believes that any auctions should involve site-specific applications for "white space" rather than MTAs or other "overlay" licenses. Whichever license area is adopted, the auction procedures should safeguard the rights of incumbent licensees. First, multiple round auctions should be used, so that the auction result will reflect the value of the license rather than an "extortion" payment from the existing licensee. If a single round auction method is used, an unscrupulous competitor can apply for a particular MTA only to force the incumbent licensee to grossly overbid for its frequency. The incumbent would thereby be subjected to the "winner's curse," because if it failed to overbid the value of the license, it would risk that a competitor or speculator would win the license (with all of the resulting adverse consequences discussed above).

B. Incumbent Licensees Should Be Exempt from Any Spectrum Cap If Bidding on Their Own Frequencies.

The Commission requests comment on whether it should (1) place a limit on the number of paging channels that can be held by a single entity within any given geographic area, and/or (2) place a limit on the holding of paging licenses by the winner of a narrowband PCS license (since narrowband PCS and paging services will presumably overlap to some degree in the potential customer base). NPRM at ¶¶ 68-70. The Commission proposes an exception to both limits that would allow incumbent licensees

to bid on any frequencies for which they are already licensed. Ameritech strongly supports this exception. Ameritech is licensed for several paging frequencies which it uses to provide a variety of services to the public. In some areas, Ameritech's regional system is so crowded with traffic that it must shift customers to local or statewide systems in cases where the customers do not need coverage throughout the region. Additional channels also allow Ameritech to offer voice paging and other services which occupy too much air time to be provided over its more crowded channels. Because incumbents have already developed these existing paging operations, and the ability to bid at auction may be necessary to defend the integrity of such systems, these licensees should not be artificially restrained from bidding.

There should be no paging spectrum cap imposed on narrowband PCS licensees. While there may be some overlap between the potential customer base for narrowband PCS and one-way paging, narrowband PCS is a fundamentally different service. Its response capability is more akin to cellular than paging. Moreover, the Commission contemplates that narrowband PCS evolve into a number of revolutionary data transfer and other services, and has fashioned its technical rules to give these licensees the flexibility to introduce such services. This will minimize any overlap between narrowband PCS and paging customers, especially since there is likely to be a significant difference in price for these services. In the event that the Commission applies a spectrum cap to narrowband PCS licensees, it should adopt its proposed exception for those licensees who are bidding on one-way channels for which they are already licensed. This exception should allow the licensee to bid anywhere in the country, since the auctions will be its only opportunity to expand its service to new markets.

C. Incumbent Licensees Should Be Allowed to Form Bidding Consortia.

The Commission has requested comment on whether incumbent co-channel licensees can form a consortium to bid for an MTA license on their frequency. Because many incumbent co-channel licensees have formed or are in the process of forming intercarrier relationships that provide for mutual service to their respective customers, it is vital that these carriers be allowed to form consortia for bidding purposes. Allowing such consortia would not be anticompetitive, because together they will be bidding on only one of more than 100 paging frequencies. Therefore, there would be no lessening of competition in the paging industry. In the absence of such consortia, valuable roaming arrangements may be jeopardized to the detriment of the public subscribers utilizing the given frequency.

IV. The Commission Should Ensure the Protection of Incumbent Licensees Following Auctions.

In addition to the above-described protections for incumbent licensees during the auction process, the Commission should provide adequate safeguards to prevent disruption of valuable existing services in the post-auction environment. The most important protection is to retain the current service area and interference protection criteria, as discussed in Section I above. Other steps must be taken to prevent the auction winner from interfering with the incumbent licensee's operations.

A. Notification and Testing.

If the market area licensing approach is adopted, the proposed rules do not require that the auction winner notify the incumbent in advance of activating co-channel transmitters. If interference is caused, by the time a complaint is resolved by the

Commission, the incumbent's customers may have already suffered significant disruption of service for a substantial period of time. Therefore, the Commission should require market area auction winners to give advance notice to co-channel incumbents before activating transmitters that are located less than 70 miles from existing facilities. The Commission should also require that the auction winner comply with a request by the incumbent for interference testing prior to operation.

B. Incumbents Must Be Allowed To Expand.

Paging systems are dynamic in nature, requiring constant modification to respond to customer demand, building penetration problems, loss of antenna sites, and other unforeseeable circumstances. It is vital that paging licensees be able to promptly and effectively add to or modify their systems in response to these exigencies. Otherwise, public subscribers suffer a degradation of service. Commissioner Chong has emphasized that the Commission should "not inadvertently hinder the ability of paging carriers to either compete or continue to expand their businesses."[10]

Ameritech recommends that incumbent licensees be entitled to expand their systems after the auction under the same criteria which Ameritech has proposed for interim expansions: (1) the incumbent could file applications for additional sites on its licensed frequency, so long as each additional site is located within 40 miles of one of the incumbent's previously authorized transmitter sites;[11] and (2) the incumbent could file

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[10] NPRM, Separate Statement of Commissioner Rachelle B. Chong, at 2.

[11] In order to prevent "creeping" system expansion, the additional site would have to be located within 40 miles of a transmitter which is either already licensed, or which will be licensed pursuant to the processing of backlogged applications which will be taking place in the immediate future. See, e.g. Public Notice, Mimeo No. DA96-219, "FCC Complete First Run of Its New Software for the Processing of 931 MHz Paging Applications," released February 22, 1996.

applications for additional transmitter sites on its licensed frequency, where the area to be served by the additional site is surrounded by the incumbent's authorized co-channel transmitters within 70 miles, forming a "pocket" around the proposed site.[12] So long as existing co-channel operations were protected by the proposed sites, these expansion applications would be granted. The former applications allow incumbents a reasonable area of growth, to satisfy immediate customer demand. The latter applications would recognize that, where an incumbent has existing sites that largely encompass a given area, it better serves the public interest to allow the incumbent to serve the resulting "hole" in the coverage, rather than allowing the auction winner to establish one or two lower-powered sites. The auction winner, having to protect the incumbent's surrounding sites, would be able to provide only minimal coverage at best. In contrast, the incumbent could provide continuous coverage throughout the area. Since the purpose of the market area licensing proposal is to encourage wide-area service, NPRM at ¶¶ 20-21, the auction winner would gain little by being able to fill-in these gaps. Unfortunately, allowing the winner to establish facilities under these circumstances would be an open invitation for unscrupulous auction licensees to undermine the service provided by the incumbent, in order to drive it off of the channel.

V. Coverage Requirements.

The Commission proposes to require the auction winner to meet certain build-out criteria, at the risk of losing the market area license. The proposed coverage

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[12] Ameritech agrees with a similar proposal made during the interim comment cycle, proposing that incumbents be allowed to fill in any area where the proposed transmitter will be surrounded by the incumbent's existing system along at least six of the eight principal radials. See Comments of the Paging Coalition, at p. 14; Reply Comments at p. 4.

requirement for market area licensees is 1/3 of the population of a particular geographic license area within three years of initial license grant, and 2/3 of the population by the end of five years. Alternatively, the Commission has proposed that these licensees could satisfy the buildout requirement by providing "substantial service" to the market within five years of the initial license grant. The Commission has indicated that the "substantial service" test could be met by providing "niche" services or by serving the populations outside the areas currently served by incumbent licensees. NPRM at ¶41, n.85, 113. As discussed above, this "substantial service" option opens the door for a competitor or speculator to win the license for an incumbent's frequency, and meet the buildout requirement by serving the small portion of the MTA not covered by the incumbent's system. Because of the adverse effects that the "substantial service" alternative could have on the provision of paging services to the general public, the Commission should forego such an alternative, unless the auction winner is an incumbent licensee on the same frequency in the same market area.

VI. The Commission Should Create a Canadian Clearance Mechanism for UHF and VHF Bands.

The NPRM discusses whether the auction rules should be modified to reflect the diminished value of MTAs which include territory above Line A, and concludes that no such modifications are necessary. Id. at ¶¶ 63-64. However, as discussed in Ameritech's March 1, 1996 comments on the interim licensing proposal, the NPRM does not discuss how incumbent licensees and eventual auction winners for these MTAs are to obtain Canadian clearance for new sites in the VHF and UHF bands, either during the pendency of the rulemaking, or afterward. 931 MHz facilities no longer require Canadian coordination, due to treaty arrangements dividing these frequencies between

the two countries. However, the lower common carrier paging bands still require site-by-site coordination. Currently, the Commission obtains clearance for such sites from the Canadian Department of Communications, as part of the application process. However, licensees seeking to implement transmitters which are within their composite interference contour and above Line A will no longer be filing applications for Commission approval.

Thus, without a substitute coordination mechanism, these carriers will be unable to establish fill-in transmitters within the composite interference contour, as contemplated by the NPRM. This will exacerbate the harmful effect of the freeze. Therefore, Ameritech repeats its request that the Commission establish a procedure whereby licensees can obtain coordination directly from the Canadian Department of Communications or through the Commission.[13] This procedure should govern both the establishment of "fill-in" transmitters by the incumbent, and buildout transmitters by the market area winner.

CONCLUSION

The Commission properly recognizes the need to protect the rights of incumbent licensees, to ensure that they can continue to provide vital services to the public. As discussed above, significant modifications to the proposed market area licensing rules are

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[13] Obtaining clearances directly from Canadian authorities may speed service to the public. The Commission has similarly allowed licenses to obtain antenna structure clearances directly from the Federal Aviation Administration.

needed to ensure that these services are not jeopardized. Accordingly, the Commission should revise its proposed licensing scheme in the manner detailed above.

Respectfully submitted,

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